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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

	)	Case Nos. 13-0360 SC
	)	13-0984 SC
TRAVELERS CASUALTY INSURANCE	)	
COMPANY OF AMERICA and TRAVELERS	)	
INDEMNITY COMPANY OF	)	ORDER DENYING MOTION TO DISMISS
CONNECTICUT,	)	<u>AND DENYING MOTION TO REMAND</u>
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AMERICAN HOME REALTY NETWORK,	)	
INC. and JONATHAN J. CARDELLA,	)	
	)	
Defendants.	)	
	)	
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AMERICAN HOME REALTY NETWORK,	)	
INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
TRAVELERS CASUALTY INSURANCE	)	
COMPANY OF AMERICA and TRAVELERS	)	
INDEMNITY COMPANY OF	)	
CONNECTICUT,	)	
	)	
Defendants.	)	
	)	
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1     **I. INTRODUCTION**

2     The underlying actions in the above-captioned cases concern  
3     two disputes between the same parties. The first dispute concerns  
4     whether Travelers Casualty Insurance Company of America and  
5     Travelers Indemnity Company of Connecticut (collectively  
6     "Travelers") may bring an action for declaratory relief and  
7     reimbursement against Defendants American Home Realty Network, Inc.  
8     ("AHRN") and AHRN's president Jonathan J. Cardella ("Cardella")  
9     (collectively "Defendants") based on duties to defend in two  
10    underlying insurance disputes. The second dispute concerns a  
11    related case, American Home Realty Network, Inc. v. Travelers  
12    Casualty Insurance Co. of America, No. 13-0984 SC (N.D. Cal.) (the  
13    "Related Case"),<sup>1</sup> brought first in state court and then removed to  
14    this Court, in which AHRN seeks declaratory relief regarding  
15    Travelers' purported duty to defend in one of the aforementioned  
16    underlying insurance disputes. Related Case ECF Nos. 1 ("Notice of  
17    Removal"), 12 ("Order Relating Case").

18    Now before the Court is Defendants' motion to dismiss  
19    Travelers' complaint for declaratory judgment and reimbursement,  
20    ECF Nos. 1 ("Compl."), 16 ("MTD"), and AHRN's motion to remand the  
21    Related Case, Related Case ECF No. 14 ("Mot. to Remand"). Both  
22    motions are fully briefed. ECF Nos. 26 ("Opp'n to MTD"), 33  
23    ("Reply ISO MTD"); Related Case ECF Nos. 19 ("Travelers Opp'n to  
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27    <sup>1</sup> For brevity's sake, future references to documents from the  
28    Related Case simply refer to its abbreviated name followed by the  
ECF number for that case's document, e.g., "Related Case ECF No.  
1." Citations to documents from the case involving AHRN's motion  
to dismiss use a reference to the ECF number alone.

Remand"), 23 ("AHRN's Reply ISO Remand").<sup>2</sup> All of the motions are appropriate for decision without oral argument, Civ. L.R. 7-1(b). For the reasons explained below, the Court DENIES Defendants' motion to dismiss Travelers' complaint and DENIES Defendants' motion to remand the Related Case.

## II. BACKGROUND & PROCEDURAL HISTORY

### A. Background

The following facts are taken from Travelers' complaint and the parties' requests for judicial notice.<sup>3</sup> The two Travelers plaintiffs are insurance corporations. Compl. ¶¶ 3-4. AHRN obtained three general commercial insurance policies from Travelers. See id. ¶¶ 9-16. One policy was issued to AHRN for the policy period July 23, 2010 to July 23, 2011 (the "AHRN Policy"). Id. ¶ 9. Two policies were issued to Neighborhubs LLC, which is AHRN's corporate owner: one for the policy period March 20, 2011 to March 20, 2012 and the other from March 20, 2012 to March 20, 2013 (collectively the "Neighborhubs Policies"). Id. ¶¶ 10-11.

The present dispute arises from two underlying actions. On March 28, 2012, Metropolitan Regional Information Systems, Inc. ("Metropolitan") sued AHRN and Cardella in the United States

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<sup>2</sup> Travelers also moved for leave to file a sur-reply in support of its oppositions to the motions to remand and dismiss filed in this matter and the Related Case. ECF No. 38. AHRN did not object. The Court DENIES this motion as moot because Travelers prevails in this action.

<sup>3</sup> The Court GRANTS both parties' requests for judicial notice because the documents in question -- insurance policies, case filings, and so forth -- all are either incorporated by reference or matters of public record. ECF Nos. 15 ("Travelers RJN"), 17 ("AHRN RJN ISO MTD"), 29 ("Travelers RJN ISO Opp'n"); Related Case ECF Nos. 20 ("Travelers Remand RJN"), 24 ("AHRN Remand RJN").

1 District Court for the District of Maryland (the "Metropolitan  
2 Action," No. 8:12-cv-00954-AW). In that action, Metropolitan  
3 asserts claims against AHRN for direct, induced, and contributory  
4 copyright infringement; false designation of origin; unfair  
5 competition under the Lanham Act; conversion; unjust enrichment;  
6 and, as to Cardella, vicarious copyright infringement. Compl. ¶¶  
7 17-24. On April 18, 2012, Regional Multiple Listing Services of  
8 Minnesota, Inc., d.b.a. NorthstarMLS ("Regional") sued AHRN in the  
9 United States District Court for the District of Minnesota (the  
10 "Regional Action," No. 0:12-cv-00965-JRT-FLN). In that action,  
11 Regional asserts claims against AHRN for copyright infringement.  
12 Compl. ¶¶ 25-32.

13 Defendants assert that the three policies cover claims against  
14 them in both the Metropolitan and Regional Actions. See id. ¶¶ 33,  
15 38. On April 9, 2012, AHRN tendered the Metropolitan Action to  
16 Travelers and requested defense and indemnity under the AHRN  
17 Policy. Id. ¶ 33. On April 25, 2012, AHRN tendered the Regional  
18 Action to Travelers, likewise requesting defense and indemnity in  
19 that action. Id. ¶ 38.

20 Travelers declined to provide a defense in the Regional  
21 Action via an email dated May 8, 2012 and confirmed its declination  
22 by phone on May 22, 2012, the same day it accepted defense of the  
23 Metropolitan Action under a full reservation of rights. Id. ¶ 33.  
24 During the phone conversation about the Metropolitan Action,  
25 Travelers also advised AHRN's general counsel that it would file a  
26 complaint for declaratory relief regarding the duty to defend. Id.  
27 On that same day, Travelers filed an action for declaratory relief  
28 in this Court as to both the Metropolitan and Regional Actions, and

1 for reimbursement as to the Metropolitan Action, all in reference  
2 to the AHRN Policy. See AHRN RJN ISO MTD, Ex. 1 ("First Federal  
3 Compl.>").

4 Later, in a letter dated June 7, 2012, Travelers confirmed the  
5 acceptance with full reservations of the Metropolitan Action.  
6 Compl. ¶¶ 33-34. On June 19, 2012, it memorialized its declination  
7 to defend in the Regional Action in a letter to Defendants, id. ¶¶  
8 38-39.

9 Sometime between June and September 2012, AHRN also requested  
10 that Travelers defend and indemnify them in the Metropolitan and  
11 Regional Actions under the Neighborhubs Policies, but Travelers  
12 declined in a letter dated September 18, 2012. Id. ¶¶ 35-36, 40.  
13 On that same day, Travelers amended its complaint to request  
14 declaratory relief and reimbursement for both the Regional and  
15 Metropolitan Actions as to the Neighborhubs Policies as well as the  
16 AHRN Policy. See First Federal Compl. ¶¶ 32, 35.

17 **B. Procedural History**

18 On October 5, 2012, AHRN moved to dismiss or alternatively to  
19 stay Travelers' First Federal Complaint. Travelers RJN ISO Opp'n  
20 Ex. 5. AHRN challenged the complaint partly on jurisdictional  
21 grounds, contending that Travelers had failed to establish the  
22 \$75,000 amount-in-controversy requirement necessary for federal  
23 courts to exercise subject matter jurisdiction in diversity cases.  
24 See id. at 14. This Court heard arguments on that motion on  
25 January 16, 2013 and dismissed Travelers' action for lack of  
26 subject matter jurisdiction on January 24, 2013. Travelers Cas.  
27 Ins. Co. of Am. v. Am. Home Realty Network, Inc., No. C 12-2637  
28 PJH, 2013 WL 271668, 2013 U.S. Dist. LEXIS 9797 (N.D. Cal. Jan. 24,

2013) ("Travelers I"). The Travelers I Court held that Travelers' declaratory relief action, filed before Travelers notified AHRN of the decisions to defend or decline the underlying actions, could not satisfy the amount-in-controversy requirement because Travelers had incurred no defense costs at the time the complaint was filed. Id. at \*4.

On the same day Travelers I was dismissed, AHRN filed a state court declaratory relief action regarding Travelers' duty to defend in the Regional Action. AHRN RJN ISO MTD, Ex. 4. On the following day, January 25, 2013, Travelers filed the instant complaint in federal court, seeking the same declaratory relief and reimbursement as to the Regional and Metropolitan Actions that it requested in the First Federal Complaint.

On March 4, 2013, Travelers agreed to defend AHRN in the Regional Action under a reservation of rights. See Related Case ECF No. 22 (Decl. of Pam Matsufuji ISO Opp'n to Remand ("Matsufuji Decl.")) ¶¶ 13, 14, Exs. 8, 9. The parties still dispute whether Travelers has a duty to defend for any period during the Regional Action's litigation, and if so, what timeframe that duty would cover. See, e.g., Travelers Opp'n to Remand at 12-14. Travelers removed AHRN's state court declaratory relief action to federal court on March 5, 2013. Related Case Notice of Removal. That case was related to this one on March 18, 2013. Related Case Order Relating Case.

Now AHRN moves to dismiss Travelers' complaint for declaratory relief and reimbursement, arguing as follows: (1) Travelers' claims regarding the Regional Action should be dismissed for lack of subject matter jurisdiction, and moreover, collateral estoppel

1 prevents Travelers from rearguing the same matter after its  
2 previous litigation and decision on the merits; (2) additionally or  
3 alternatively, Travelers' complaint should be dismissed as to the  
4 Regional Action because AHRN filed its own declaratory relief  
5 action in state court before Travelers filed the instant action;  
6 (3) additionally or alternatively, the Court should exercise its  
7 discretion under the Declaratory Judgment Act ("DJA"), 28 U.S.C. §  
8 2201, and dismiss Travelers' claims as to either the Regional  
9 Action alone or both underlying actions.<sup>4</sup>

10 Travelers opposes AHRN's motion to dismiss. It argues that  
11 the Court has subject matter jurisdiction over the instant matter  
12 because its defense costs will almost certainly exceed \$75,000, and  
13 that the Court should not decline to hear Travelers' actions for  
14 declaratory relief. See generally Opp'n to MTD.

15 AHRN also seeks to remand the Related Case to state court,  
16 arguing -- essentially as it does in its motion to dismiss -- that  
17 (i) Travelers lacks removal jurisdiction because it fails to  
18 satisfy the amount in controversy requirement, and (ii) the Court  
19 should not exercise its discretion under the DJA and removal  
20 jurisdiction to hear Travelers' declaratory relief claims. See  
21 generally Related Case Mot. to Remand. Travelers opposes this  
22 motion for the same reasons it does AHRN's motion to dismiss.

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26 <sup>4</sup> Defendants also argue that the Court should dismiss Travelers'  
27 complaint if Travelers does not maintain or follow through on steps  
28 to minimize prejudice to AHRN or Cardella in the underlying actions  
as a result of this litigation. Based on the parties' arguments,  
this dispute is not ripe. The Court declines to address it here.

1 **III. LEGAL STANDARD**

2 **A. Motions to Dismiss**

3 A motion to dismiss under Federal Rule of Civil Procedure  
4 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.  
5 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based  
6 on the lack of a cognizable legal theory or the absence of  
7 sufficient facts alleged under a cognizable legal theory."  
8 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
9 1988). "When there are well-pleaded factual allegations, a court  
10 should assume their veracity and then determine whether they  
11 plausibly give rise to an entitlement to relief." Ashcroft v.  
12 Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court  
13 must accept as true all of the allegations contained in a complaint  
14 is inapplicable to legal conclusions. Threadbare recitals of the  
15 elements of a cause of action, supported by mere conclusory  
16 statements, do not suffice." Id. (citing Bell Atl. Corp. v.  
17 Twombly, 550 U.S. 544, 555 (2007)). The court's review is  
18 generally "limited to the complaint, materials incorporated into  
19 the complaint by reference, and matters of which the court may take  
20 judicial notice." Metzler Inv. GMBH v. Corinthian Colls., Inc.,  
21 540 F.3d 1049, 1061 (9th Cir. 2008) (citing Tellabs, Inc. v. Makor  
22 Issues & Rights, Ltd., 551 U.S. 308, 322 (2007)).

23 **B. Declaratory Judgments**

24 Under the Declaratory Judgment Act, the Ninth Circuit applies  
25 a two-part test to determine whether jurisdiction over a claim for  
26 a declaratory relief is appropriate. Principal Life Ins. Co. v.  
27 Robinson, 394 F.3d 665, 669 (9th Cir. 2005). The court must first  
28 determine if an actual case or controversy exists within its



1 jurisdiction. Id. If so, the court must then decide whether to  
2 exercise its jurisdiction. Id.

3 District courts have "discretion in determining whether and  
4 when to entertain an action under the Declaratory Judgment Act."  
5 Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995). However,  
6 "there is no presumption in favor of abstention in declaratory  
7 actions generally, nor in insurance coverage cases specifically."  
8 Gov't Emps. Ins. Co. v. Dizol, 133 F.3d 1220, 1225 (9th Cir.  
9 1998).

10 "The district court's discretion to hear declaratory actions  
11 over which it has jurisdiction is guided by the Supreme Court's  
12 announcements in [Brillhart v. Excess Ins. Co., 316 U.S. 491  
13 (1942)]." Dizol, 394 F.3d at 672. "The Brillhart factors are non-  
14 exclusive and state that, '[1] the district court should avoid  
15 needless determination of state law issues; [2] it should  
16 discourage litigants from filing declaratory actions as a means of  
17 forum shopping; and [3] it should avoid duplicative litigation.'" Id.  
18 (quoting Dizol, 133 F.3d at 1225) (alterations in original).  
19 "Essentially, the district court must balance concerns of judicial  
20 administration, comity, and fairness to the litigants."  
21 Id. (internal quotations omitted). The Ninth Circuit has also  
22 "noted additional and potentially relevant considerations,"  
23 including "whether the declaratory action will serve a useful  
24 purpose in clarifying the legal relations at issue" and "whether  
25 the declaratory action is being sought merely for the purposes of  
26 procedural fencing or to obtain a 'res judicata' advantage." Id.

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1 **IV. DISCUSSION**

2 **A. Subject Matter Jurisdiction**

3 The parties do not dispute that the Court has subject matter  
4 jurisdiction over claims related to the Metropolitan Action.  
5 However, they disagree on whether the Court has subject matter over  
6 claims related to the Regional Action. Specifically, they dispute  
7 whether the amount in controversy in that action exceeds the  
8 \$75,000 limit set by 28 U.S.C. § 1332(a). Defendants claim that  
9 the amount in controversy is either zero, since Travelers filed its  
10 complaint before making a coverage decision, or that it is under  
11 \$75,000, since AHRN claims that its legal bills will go no higher.  
12 See MTD at 10-11. Travelers responds that because its complaint  
13 alleges an amount in controversy in excess of \$75,000, based on  
14 projected defense costs for the entire Regional Action litigation -  
15 - not just the relatively short period that AHRN claims is at  
16 issue. See Opp'n to MTD at 9-14. AHRN responds by insisting that  
17 its facts are correct and unchanging, and arguing that collateral  
18 estoppel precludes this issue, since this Court already heard and  
19 decided the parties' arguments on this issue in Travelers I. Reply  
20 ISO MTD at 2-6.

21 While the issues presented in Travelers I's holding on the  
22 motion to dismiss were similar to those presented on the same  
23 motion here, the facts are not precisely the same, thereby making  
24 it improper for the Court to apply collateral estoppel here. Since  
25 the conclusion of Travelers I, Travelers has assumed the defense of  
26 the Regional Action, and the parties agree that AHRN has indeed  
27 incurred substantial fees and costs in that action. AHRN insists  
28 the amount in controversy can be no more than \$58,998.20, while

1 Travelers says that costs incurred plus future costs will be at  
2 least \$76,000. See, e.g., Opp'n to Remand at 12-14, Reply ISO  
3 Remand at 7. In the parties' briefs on AHRN's motion to dismiss,  
4 the parties are not so precise on the numbers, but the arguments  
5 are the same. See Opp'n to MTD at 9-14; Reply ISO MTD at 2-6. The  
6 Court's findings on this issue take into account the facts and  
7 arguments from both of the motions now before the Court, since both  
8 motions argue essentially the same point.

9 Under 28 U.S.C. § 1332(a), diversity jurisdiction exists only  
10 "where the matter in controversy exceeds the sum or value of  
11 \$75,000 exclusive of interest or costs." To dismiss for lack of  
12 this jurisdictional amount it must appear "to a legal certainty"  
13 that the claim is really for less than the jurisdictional amount.  
14 St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 288-89  
15 (1938). "A situation which typically meets the legal certainty  
16 test occurs where a rule of law or measure of damages limits the  
17 amount of damages recoverable." Morris v. Hotel Riviera, Inc., 704  
18 F.2d 1113, 1115 (9th Cir. 1983). The party seeking federal court  
19 jurisdiction has the burden of proving that the amount in  
20 controversy requirement is satisfied under the legal certainty  
21 test. Gibbs v. Buck, 307 U.S. 66, 72 (1939). In a declaratory  
22 relief action the amount in controversy "is not what might have  
23 been recovered in money, but rather the value of the right to be  
24 protected or the injury to be prevented." Jackson v. Am. Bar  
25 Ass'n, 538 F.2d 829, 831 (9th Cir. 1976).

26 The Court finds that Travelers has shown, based on its  
27 pleadings, declarations, and arguments, that a duty to defend the  
28 Regional Action would result in costs totaling more than \$75,000 --

1 this is the "injury to be prevented" under Jackson, 538 F.3d at  
2 831. See Opp'n to Remand at 11-14 (citing Matsufuji Decl. ¶¶ 15,  
3 16, Ex. 10; Decl. of Nicholas Boos ISO Opp'n to Remand ¶ 10, Ex.  
4 3). The Court finds that Travelers has shown that a probability of  
5 its costs exceeding the amount in controversy requirement exists,  
6 even considering AHRN's insistence that the case will settle before  
7 bills reach that limit or that the billing should be limited to a  
8 timeframe in which billing could not reach \$75,000. Id. Legal  
9 bills exceeding \$75,000 are likely because the parties dispute the  
10 possibility of settlement, the litigation activity in the  
11 underlying action has been substantial, and if Travelers is indeed  
12 held to have a duty to defend that action its costs would be almost  
13 certainly more than \$75,000. Id.; see also Kessloff v. State Farm  
14 Gen. Ins. Co., No. C-89-3330 SC, 1990 U.S. Dist. LEXIS 13571, at \*3  
15 (N.D. Cal. Mar. 26, 1990) (deciding a similar issue on a motion to  
16 remand). Given the disputes, the Court does not find it a "legal  
17 certainty" that Travelers' claim is for less than the  
18 jurisdictional amount. See Gaus v. Miles, Inc., 980 F.2d 564, 566  
19 (9th Cir. 1992). This finding applies to both AHRN's motion to  
20 dismiss and its motion to remand.

21 The Court accordingly declines to dismiss Travelers' claims  
22 for declaratory relief as to the Regional Action. The Court also  
23 finds unconvincing AHRN's argument that the "first-to-file" rule  
24 warrants dismissal of Travelers' Regional-related declaratory  
25 relief claims because AHRN's state court action for declaratory  
26 relief was filed first. See, e.g., Reply ISO MTD at 6-8. That  
27 rule might be found to apply when there are parallel state  
28 proceedings on the same issues pending at the time the federal

1 declaratory action was filed. Dizol, 133 F.3d at 1220-23.  
2 However, the Court does not find that presumption warranted here  
3 since the state court action has long since been removed and  
4 related to the federal one.

5 **B. Declaratory Judgment Actions**

6 As to Travelers' DJA claims regarding the Regional and  
7 Metropolitan Actions, AHRN argues that the factors articulated in  
8 Dizol and Brillhart caution against the Court's exercising  
9 jurisdiction over those claims. For the reasons discussed below,  
10 the Court finds otherwise and exercises its discretion under the  
11 DJA to hear Travelers' claims for declaratory relief as to both  
12 underlying actions.

13 **i. State Law Issues**

14 "When parallel state proceedings involving the same issues and  
15 parties [are] pending at the time the federal declaratory action is  
16 filed, there is a presumption that the entire suit should be heard  
17 in state court." Am. Cas. Co. v. Krieger, 181 F.3d 1113, 1118 (9th  
18 Cir. 1999) (internal quotation omitted). A "needless decision of  
19 state law" may involve: an ongoing parallel state proceeding  
20 regarding the "precise state law issue," an area of law Congress  
21 expressly left to the states, or a lawsuit with no compelling  
22 federal interest (for instance, when a case is solely based on  
23 diversity). Cont'l Cas. Co. v. Robsac Indus., 947 F.2d 1367, 1371-  
24 72 (9th Cir. 1991), overruled in part on other grounds by Dizol,  
25 133 F.3d 1220. "However, there is no presumption in favor of  
26 abstention in declaratory actions generally, nor in insurance cases  
27 specifically." Dizol, 133 F.3d at 1226. Indeed, the district  
28

1 court is in the "best position to assess how judicial economy,  
2 comity and federalism are affected in a given case." Id. at 1226.

3 Defendants argue that because the underlying issues in this  
4 matter involve California insurance law, and state courts are best  
5 situated to "identify and enforce the public policies that form the  
6 foundation of such regulations," this factor favors dismissal. See  
7 Reply ISO MTD at 9 (quoting Emp'rs Reinsurance Corp. v. Karussos,  
8 65 F.3d 796, 799 (9th Cir. 1995)). Travelers respond that federal  
9 court practice in granting declaratory relief in insurance issues  
10 belies this suggestion, and that in any event, whatever pending  
11 state law claims were at issue in Defendants' state law declaratory  
12 relief action are moot because Travelers has now removed that  
13 action and related it to this case. See Opp'n to MTD at 19.

14 The Court finds that decision of Travelers' declaratory relief  
15 claims will necessarily involve application of California insurance  
16 law, and the only reason Travelers are in federal court is on  
17 diversity grounds, suggesting that the federal interest in this  
18 matter is at its nadir. See Robsac, 947 F.2d at 1371. However,  
19 since the related state action has been removed and related, there  
20 is no ongoing parallel state action, and so concerns about comity,  
21 economy, and federalism are somewhat lessened. See Dizol, 133 F.3d  
22 at 1226. The Court finds that this factor is neutral.

### 23 **ii. Forum Shopping**

24 "This factor usually is understood to favor discouraging an  
25 insurer from forum shopping, i.e., filing a federal court  
26 declaratory action to see if it might fare better in federal court  
27 at the same time the insurer is engaged in a state court action."  
28 Am. Cas. Co. of Reading, Pa. v. Krieger, 181 F.3d 1113, 1119 (9th

1 Cir. 1999). This concern is particularly pertinent in reactive or  
2 defensive declaratory actions. Robsac, 947 F.2d at 1371.

3 Defendants argue that Travelers is engaged in forum shopping  
4 because it filed its action in federal court before issuing  
5 coverage positions on the underlying actions, suggesting that  
6 Travelers had planned its complaint in advance in order to secure a  
7 favorable jurisdiction early. See Reply ISO MTD at 9-10.  
8 Travelers, in turn, asserts that it has every right to be in  
9 federal court on jurisdictional grounds, that it informed  
10 Defendants of its coverage positions before filing its federal  
11 action, and that there has never been a parallel state action at  
12 the same time Defendants have been in federal court. See Opp'n to  
13 MTD at 19-20. Having considered these facts and the parties'  
14 arguments on the issue, the Court finds no evidence suggesting that  
15 Travelers is gaming the system by bringing its suit in this Court.

16 The Court finds that this factor favors the exercise of  
17 jurisdiction over Travelers' declaratory relief claims.

18 **iii. Duplicative Litigation**

19 The third Brillhart factor seeks to avoid duplicative  
20 litigation. "If there are parallel state court proceedings  
21 involving the same issues and parties pending at the time the  
22 federal declaratory action is filed, there is a presumption that  
23 the entire suit should be heard in state court." Dizol, 133 F.3d  
24 at 1225. "Ordinarily it would be uneconomical as well as vexatious  
25 for a federal court to proceed in a declaratory judgment suit where  
26 another suit is pending in a state court presenting the same  
27 issues, not governed by federal law, between the same parties."  
28 Brillhart, 316 U.S. at 495. However, the pendency of a state court

1 action does not require a district court to refuse federal  
2 declaratory relief, but the federal courts should generally decline  
3 to entertain reactive declaratory actions. Dizol, 133 F.3d at  
4 1225.

5 The parties' arguments on this issue were mostly briefed  
6 before Travelers had removed AHRN's state court action and related  
7 it to this one. Those arguments are moot. Anticipating this  
8 result, Defendants suggest that "even if the San Francisco Superior  
9 Court complaint was removed, the existence of the pending Regional  
10 and Metropolitan Actions favor dismissal." Reply ISO MTD at 10.  
11 This argument is not compelling: the underlying actions concern,  
12 among other things, copyright infringement and unfair competition,  
13 not the duty to defend.

14 The Court finds that this factor favors the exercise of  
15 jurisdiction over Travelers' declaratory relief claims.

16 **iv. Conclusion as to Declaratory Relief Claims**

17 Based on consideration of the foregoing factors, the Court  
18 concludes that practicality, equity, and judicial economy are best  
19 served by exercising jurisdiction over Travelers' declaratory  
20 relief claims. This will provide for speedier adjudication of the  
21 parties' disputes, as opposed to splitting the actions piecemeal  
22 and -- most likely -- seeing them return to federal court, or be  
23 remanded to the state, in various positions of procedural disarray.  
24 Moreover, deciding the declaratory action now would clarify the  
25 parties' relations. Accordingly, Defendants' motion to dismiss as  
26 to these claims is DENIED.

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1           **C.    AHRN's Motion to Remand**

2           AHRN moves to remand its own case for declaratory relief  
3 against Travelers to state court, arguing that (1) the Court lacks  
4 subject matter jurisdiction and (2) additionally or alternatively,  
5 Travelers' removal was improper because the Brillhart and Dizol  
6 factors weigh against the Court's exercising its jurisdiction. See  
7 Mot. to Remand at 6-13. AHRN also asks for fees and costs because  
8 it claims Travelers' removal was improper as a matter of law. Id.  
9 at 13-14. The Court's analysis in Sections IV.A-B, supra, applies  
10 to AHRN's two arguments because they are essentially the same in  
11 both motions. Accordingly, the Court DENIES AHRN's motion to  
12 remand and DENIES AHRN's request for fees and costs associated with  
13 that motion.

14  
15           **V.    CONCLUSION**

16           For the reasons explained above, the Court DENIES Defendants  
17 American Home Realty Network, Inc. and Jonathan J. Cardella's  
18 motion to dismiss Travelers Casualty Insurance Company of America  
19 and Travelers Indemnity Company of Connecticut's complaint in Case  
20 No. 13-0360 SC. The Court also DENIES AHRN's motion to remand in  
21 Case No. 13-0984 SC.

22  
23           IT IS SO ORDERED.

24  
25           Dated: April 29, 2013



26           UNITED STATES DISTRICT JUDGE  
27  
28